

**§ 58-30-40. Turnover of property by a custodian.**

- (a) As used in this section "custodian" means:
- (1) A receiver or trustee of any of the property of the insurer, appointed in a case or proceeding not under this Article;
  - (2) An assignee under a general assignment for the benefit of the insurer's creditors; or
  - (3) A trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the insurer for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the insurer's creditors.
- (b) A custodian with knowledge of the commencement of a proceeding under this Article may not make any disbursement from, or take any action in the administration of property of the insurer, proceeds of such property, or property of the estate, in the possession, custody, or control of such custodian, except such action as is necessary to preserve such property.
- (c) A custodian shall:
- (1) Deliver to the receiver any property of the insurer transferred to such custodian, or proceeds of such property, that is in such custodian's possession, custody, or control on the date that such custodian acquires knowledge of the commencement of the proceeding; and
  - (2) File an accounting of any property of the insurer, or proceeds of such property, that, at any time, came into the possession, custody, or control of such custodian.
- (d) The Court, after notice and a hearing, shall:
- (1) Protect all entities to which a custodian has become obligated with respect to such property;
  - (2) Provide for the payment of reasonable compensation for services rendered and costs and expenses incurred by such custodian; and
  - (3) Surcharge such custodian, other than an assignee for the benefit of the insurer's creditors that was appointed or took possession more than 120 days before the date of the filing of the petition, for any improper excessive disbursement, other than a disbursement that has been made in accordance with applicable law or approved, after notice and a hearing, by a court of competent jurisdiction before the commencement of the proceeding under this Article.
- (e) The Court may, after notice and a hearing, excuse compliance with subsection (a), (b), or (c) of this section, if the interests of policyholders, creditors, and any equity security holders would be better served by permitting a custodian to continue in possession, custody, or control of such property. (1989, c. 452, s. 1.)